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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 450.

THE UNITED STATES, APPELLANT,

vs.

BENJAMIN F. JONES, JR., AS SOLE ADMINISTRATOR OF THE ESTATE OF ADELAIDE P. DALZELL, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 16, 1914.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 450.

THE UNITED STATES, APPELLANT,

vs.

ENJAMIN F. JONES, JR., AS SOLE ADMINISTRATOR OF THE ESTATE OF ADELAIDE P. DALZELL, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

1 Court of Claims.

BENJAMIN F. JONES, JR., AS SOLE ADMINISTRATOR OF the estate of Adelaide P. Dalzell, deceased.
v.
THE UNITED STATES. } No. 30296.

I. *History of proceedings.*

The original petition in this case was filed November 23, 1908.

On February 3, 1910, the defendant filed a demurrer to said petition.

On January 24, 1912, the claimant, by leave of court, filed his amended petition, of which the following is a copy:

II. *Amended petition.*

Amended petition. Filed January 24, 1912.

To the Honorable the Chief Justice and the Judges of the Court of Claims:

Your petitioner, a citizen of the United States, as sole administrator of the estate of Adelaide P. Dalzell, deceased, respectfully represents:

I.

On the 13th day of June, 1898, the President of the United States approved an act entitled "An act to provide ways and means to meet war expenditures, and for other purposes" (30 Stats. L.,
2 448). Pursuant to the provisions of section 29 of said act and to the amendments thereof by act approved March 2, 1901 (31 Stats. L., 938, 946), taxes were assessed and collected upon legacies and distributive shares of personal property passing from the estates of persons who died subsequent to the approval of said acts.

II.

By act approved April 12, 1902 (32 Stats. L., 96, 97), section 29 of the act of June 13, 1898, above referred to, together with all amendments thereof, was repealed to take effect July 1, 1902.

III.

On June 27, 1902, the President approved an act entitled "An act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth, under the act of June thirteenth, eighteen hundred and ninety-eight, and for other purposes" (32

Stat. L., 406). The portion of said act material to this case is as follows:

"SEC. 3. That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the act approved June thirteenth, eighteen hundred and ninety-eight, entitled 'An act to provide ways and means to meet war expenditures, and for other purposes,' and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said act approved June
3 thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two."

IV.

On the 28th day of June, 1902, Adelaide P. Dalzell, a widow, a citizen of the United States and resident of the city of Pittsburgh, county of Allegheny, State of Pennsylvania, departed this life. Said Adelaide P. Dalzell died intestate and her sole next of kin her surviving were two daughters, Virginia C. Dalzell and Sue D. D. Jones, each of whom is still living. By proceedings duly had in the orphans' court in the city of Pittsburgh, a court having full, complete, and exclusive jurisdiction over the estate of the said Adelaide P. Dalzell, letters of administration were therefore, to wit, on July 14, 1902, duly and lawfully issued thereon to your petitioner by said court. A certified copy of said letters of administration was duly filed herein on the 22d day of January, 1912.

Upon the issuance of letters of administration to your petitioner as aforesaid, title to all of the personal property of every kind and description forming a part of the said estate vested, under the laws and statutes of said State, solely in your petitioner as administrator as aforesaid, as of the date of the death of the said Adelaide P. Dalzell. Your petitioner duly qualified as such administrator and is still administrator of said estate. In accordance with law your petitioner became, upon qualifying as administrator as aforesaid, immediately entitled to the actual possession of said personal property and accordingly had actual and exclusive possession thereof.

V.

Under and by virtue of the laws of the State of Pennsylvania
4 in force at the time of the death of said Adelaide P. Dalzell,

the said Virginia C. Dalzell and Sue D. D. Jones, her daughters, would each ultimately become entitled to receive one-half of the net personal estate of said Adelaide P. Dalzell, after the payment of all debts and expenses for which the estate of said Adelaide P. Dalzell might be legally liable.

VI.

The said Adelaide P. Dalzell died seized and possessed of personal property of the gross value of $226,115.29, subject to deductions for legal debts and charges for which she or her estate was liable. Such debts and charges were subsequently ascertained to amount to $6,773.55. All of said debts and charges were paid by your petitioner, as administrator as aforesaid, at various dates subsequent to the granting of letters of administration to your petitioner and during the period allowed by the laws of said State for the presentation and payment of such claims and charges. Prior to the payment of said claims and charges the amount, if any, which said Virginia C. Dalzell and Sue D. D. Jones would be ultimately entitled to receive from the estate of the said Adelaide P. Dalzell could not, under the above-mentioned laws, be ascertained.

The value of the net personal estate remaining in your petitioner's possession as administrator, as aforesaid, after payment of the said debts and expenses, amounted to $219,341.74, and such net personal estate, less the sum of $3,290.12 paid to the United States as hereinafter set forth, was by your petitioner as administrator, as aforesaid, equally divided between said daughters of Adelaide P. Dalzell, share and share alike. Neither Virginia C. Dalzell nor Sue D. D. Jones received in possession or enjoyment any of the personal property belonging to the estate of said Adelaide P. Dalzell prior to July 1, 1902, and they were not entitled to so receive any such property prior thereto. There was no payment or distribution made to either of the said daughters of Adelaide P. Dalzell, nor were they or either of them put into possession or enjoyment, nor were they or either of them entitled to the possession or enjoyment, of any part of the personal property belonging to her estate until after the expiration of the time allowed by law for the payment of debts and charges; but said personal estate remained in the exclusive possession and control of your petitioner as aforesaid until the 4th day of May, 1903, when he made distribution thereof as aforesaid, pursuant to an account filed by him as such administrator in said orphans' court, which said account and distribution were duly confirmed by said court.

VII.

On or about October 24, 1905, the collector of internal revenue in the city of Pittsburgh, as aforesaid, acting for and on behalf of the United States, and assuming to act as such and under the provisions of the act of Congress approved June 13, 1898, and amendments

heretofore referred to, collected from petitioner as administrator, as aforesaid, the sum of $3,290.12, claiming the same to be lawfully assessed under said act on account of the alleged interests of Virginia C. Dalzell and Sue D. D. Jones, as aforesaid, in said personal estate, being a tax of $1,645.06 upon each of said alleged interests.

Said sum of $3,290.12 was paid by petitioner without protest and was duly turned over and delivered to the United States by said collector of internal revenue in the usual and ordinary course of his duties as such collector.

VIII.

On or about the 24th day of May, 1906, your petitioner, by his attorneys, duly filed an application in the Treasury Department praying the refundment of all of said moneys. No action having been taken upon said application, petitioner, by his attorneys,
6 under date of November 21, 1908, in a letter to the Commissioner of Internal Revenue, pursuant to regulations approved by the Secretary of the Treasury, on July 15, 1902 (Department Circular No. 86, Int. Rev. No. 630), inter alia, stated:

"We also have the honor to request the action of the Secretary of the Treasury upon this claim. Under the laws of the State of Pennsylvania the distributees of this estate whose interests were taxed were not entitled to receive into their possession their respective interests until after the expiration of one year from the date of the granting of letters of administration, and such taxes are refundable under the provisions of act of Congress, approved June 27, 1902 (32 Stat. L., 406)."

Said application was in all respects complete, regular, and in accordance with the law and regulations and was accompanied by all necessary evidence and proof of facts. The facts as alleged in said application were not traversed or denied by the Secretary of the Treasury or by any representative of the United States. Although said application was in all respects complete and in due form, nevertheless, on the 21st day of November, 1908, the Secretary of the Treasury rejected and denied said application, and he has continuously declined and still declines and refuses to pay to your petitioner the moneys asked and demanded in his application, as aforesaid.

IX.

Your petitioner is advised by his counsel, and therefore avers, that as Virginia C. Dalzell and Sue D. D. Jones did not receive or come into possession or enjoyment of and were not entitled to receive in possession or enjoyment any part of the personal estate of said Adelaide P. Dalzell prior to July 1, 1902, that the moneys which were collected from petitioner as taxes thereon are refundable to him as sole administrator of said estate under the terms of, and
7 directions contained in, the third section of the act of Congress approved June 27, 1902, as hereinbefore set forth, and

that the refusal of the Secretary of the Treasury to so refund such moneys is directly in violation of said act.

X.

No action upon this claim, other than that hereinbefore set forth, has been taken before the Congress or any of the departments of the Government.

XI.

Petitioner avers that there is justly due and owing to him as administrator of the estate of Adelaide P. Dalzell from the United States on account of the matters hereinbefore set forth the sum of $3,290.12 after deducting all just set-offs and demands on the part of the United States, that he as such administrator is the sole owner of the claim herein sued upon and that no assignment or transfer of the claim or any part thereof or any interest in same has been made.

Wherefore your petitioner prays judgment against the United States for $3,290.12.

BENJAMIN F. JONES, JR.,
As Sole Administrator of the Estate of Adelaide P. Dalzell, Deceased,
By BARRY MOHUN,
Attorney of Record.

MADDOX & GATLEY,
Of Counsel.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, a notary public in and for the District of Columbia, Barry Mohun, who, being duly sworn according to law, deposes and says that he has been duly authorized to make oath in this cause by powers of attorney heretofore filed herein, that he has read and understands the foregoing amended petition and that the matters and facts therein set forth are true in substance and in fact, as he is informed and believes.

BARRY MOHUN.

Subscribed and sworn to before me this 23d day of January, A. D. 1912.

[NOTARIAL SEAL.] JOHN P. MCMAHON,
Notary Public, D. C.

8 III. *Defendant's demurrer to amended petition. Filed Feb. 8, 1912.*

And now come the said defendants, by their Attorney General, and demurring to the petition in this cause, state, as the ground thereof, that the petition does not allege facts sufficient to constitute a cause of action.

JOHN Q. THOMPSON,
Assistant Attorney General.

IV. *History of further proceedings.*

On February 26, 1912, the above demurrer was argued and submitted.

On February 3, 1913, the demurrer was overruled, with an opinion by Howry, J.

On April 28, 1913, the court filed an order setting aside judgment overruling defendant's demurrer, withdrawing opinion (filed February 3, 1913), and remanded the case to the general docket.

On October 25, 1913, the court filed an order placing case on trial calendar for oral argument.

9 V. *Argument and submission of case.*

On November 12, 1913, this case came on to be heard. Mr. Barry Mohun was heard for the claimant; Mr. George M. Anderson was heard in opposition and the case was submitted.

10 VI. *Findings of fact, conclusion of law, and opinion of the court. Filed March 23, 1914.*

Court of Claims of the United States.

(Decided March 23, 1914.)

BENJAMIN F. JONES, JR., AS SOLE ADMINISTRATOR OF the estate of Adelaide P. Dalzell, deceased,
v.
THE UNITED STATES. } No. 30296.

* * * * * * *

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of fact.

I.

Claimant is a citizen of the United States and a resident of the city of Pittsburgh, in the State of Pennsylvania.

II.

On the 28th day of June, 1902, Adelaide P. Dalzell, a widow, a citizen of the United States and resident of the city of Pittsburgh, State of Pennsylvania, departed this life. Said Adelaide P. Dalzell died intestate, leaving her surviving as her sole next of kin two daughters, Virginia C. Dalzell and Sue D. D. Jones, each of whom is still living.

By proceedings duly had in the orphans' court in the city of Pittsburgh, said court having full, complete, and exclusive jurisdiction over the estate of the said deceased, letters of administration upon said estate were thereafter, to wit, on July 14, 1902, duly and lawfully issued to claimant, who duly qualified as such administrator; and claimant is still administrator of said estate. Upon
11 qualifying as administrator as aforesaid, claimant immediately became entitled to the actual possession of the personal property belonging to the estate of said deceased, and accordingly had actual and exclusive possession thereof, and claimant thus acquired and held title to and exclusive possession of all of said personal property as administrator as aforesaid until the date hereinafter shown, by virtue of the laws of the State of Pennsylvania, which provides as follows:

"No administrator shall be compelled to make distribution of the goods of an intestate until one year be fully expired from the granting of the administration of the estate." (Act 24th Feb., 1834, sec. 38, P. L. 80, Purd., 447.)

III.

Under and by virtue of the laws of the State of Pennsylvania in force at the time of the death of said deceased and still in force, the said Virginia C. Dalzell and Sue D. D. Jones, her daughters, would each ultimately receive one-half of the net personal estate of said deceased, after the payment of all debts and charges for which the estate of said deceased might be legally liable.

IV.

Said deceased died seized and possessed of personal property of the gross value of $226,115.29, subject to deductions for legal debts and charges for which she or her estate was liable. Such debts and charges were subsequently ascertained to amount to $6,773.55. Each and all of said debts and charges were ascertained and paid by
12 claimant, as administrator as aforesaid, at various dates subsequent to the granting of letters of administration to claimant and during the period allowed by the laws of said State for the presentation and payment of such claims and charges. Prior to the approval of said debts and charges and during the period allowed by law for the filing of claims against said estate the amount, if any, which said Virginia C. Dalzell and Sue D. D. Jones would be ultimately entitled to receive from the estate of the said deceased could not be determined.

The value of the net personal estate remaining in claimant's possession as administrator as aforesaid, after approval and payment of the said debts and charges, amounted to $219,341.74, and such net personal estate, less the sum of $3,290.12 paid to the United States as hereinafter set forth, was by claimant as administrator as afore-

said divided equally between said Virginia C. Dalzell and Sue D. D. Jones, share and share alike, but said personal estate remained in the exclusive possession and control of claimant as administrator as aforesaid until the 4th day of May, 1903, when he made distribution thereof as aforesaid, pursuant to an account filed by him as such administrator in said orphans' court, which said account and distribution were duly approved by said court.

V.

On or about October 24, 1905, the collector of internal revenue in the city of Pittsburgh as aforesaid, acting for and on behalf of the United States and assuming to act as such, under the provisions of the act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes" (30 Stat. L., 448), and amendments thereof approved March 2, 1901 (31 Stat. L., 938, 946), collected from claimant as administrator as aforesaid the sum of $3,290.12, claiming the same to be lawfully assessed and payable under said act on account of the alleged interests of Virginia C. Dalzell and Sue D. D. Jones, as aforesaid, in said personal estate, being a tax of $1,645.06 upon each of said alleged interests.

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Said sum of $3,290.12 was paid by claimant to said collector of internal revenue without protest, and was duly turned over and delivered to the United States by said collector.

VI.

On or about the 24th day of May, 1906, claimant, by his attorneys, duly filed an application in the Treasury Department, praying the refundment of all of said moneys. No action having been taken upon said application, claimant, by his attorneys, under date of November 21, 1908, in a letter to the Commissioner of Internal Revenue, pursuant to regulations approved by the Secretary of the Treasury, on July 15, 1902, Department Circular No. 86, Int. Rev. No. 630, inter alia, stated:

"We also have the honor to request the action of the Secretary of the Treasury upon this claim. Under the laws of the State of Pennsylvania the distributees of this estate whose interests were taxed were not entitled to receive into their possession their respective interests until after the expiration of one year from the date of the granting of letters of administration, and such taxes are refundable under the provisions of act of Congress approved June 27, 1902 (32 Stat. L., 406.)"

Said application was in all respects complete, regular, and in accordance with the requirements of the aforesaid act of Congress approved June 27, 1902, and with the regulations in regard to such applications, and said application was accompanied by all necessary evidence and proof of facts. The facts as alleged in said application were not traversed or denied by the Secre-

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tary of the Treasury or by any representative of the United States. Although said application was in all respects complete and in due form, nevertheless, on the 21st day of November, 1908, the Secretary of the Treasury rejected and denied said application.

Conclusion of law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is entitled to recover judgment against the United States in the sum of three thousand, two hundred and ninety dollars and twelve cents ($3,290.12).

Opinion.

HOWRY, Judge, delivered the opinion of the court:

This action is for the recovery of taxes alleged to have been unlawfully collected under the act of June 30, 1898 (30 Stat., 448), as amended by the act of March 2, 1901 (32 Stat., 964), known as the Spanish War-revenue act. After the filing of the original and an amended petition, defendants demurred upon the ground that neither petition alleges sufficient facts to constitute a cause of action. On the final hearing the parties moved the court for permission to file an agreed statement of facts, and this motion was allowed. Treating the demurrers as withdrawn and abandoned, the court makes the findings as agreed to by the parties and now disposes of the case on the merits.

Adelaide P. Dalzell, a widow and resident of Pittsburgh, Pa., died June 28, 1902, intestate, leaving as her sole next of kin her two daughters, each of whom is still living. Proceedings were had in a local court having jurisdiction over the estate of the deceased, and letters of administration were issued to the plaintiff, who qualified as administrator and took possession of the personal property. The statutes of Pennsylvania under which possession was taken provided that, "No administrator shall be compelled to make distribution of the goods of an intestate until one year be fully expired from the granting of the administration of the estate." (Act 24th Feb., 1834, sec. 38, P. L. 80, Purd., 447.)

Under the local law in force at the time of the death of the deceased her daughters were entitled each to receive one-half of the net personal estate after the payment of all debts and charges for which the estate might be legally liable. The debts and charges were ascertained and paid by the administrator. After their payment the net personal estate amounted to $219,341.74. The personal estate remained in the exclusive possession and control of the administrator until May 4, 1903, when the assets were distributed. But in October, 1905, the collector of internal revenue, acting for and on behalf of the United States, and assuming to act under the provisions of the act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes" (30 Stat., 448), and amendments thereto

approved March 2, 1901 (31 Stat., 938), collected from the administrator $3,290.12, claiming the same to be lawfully assessed and payable on account of the interests of the two surviving daughters. The sum stated was paid by the administrator to the collector without protest and placed in the Treasury. Subsequently, in May, 1906, the administrator applied for a refund of the amount of the tax. No action was taken upon this application, but on November 21, 1908, a letter was addressed to the Commissioner of Internal Revenue, pursuant to regulations, as follows: "We also have the honor to request the action of the Secretary of the Treasury upon this claim"—predicating the application upon the fact that the distributees of the estate whose interests were taxed were not entitled to receive into their possession their distributive shares until after the expiration of one year from the date of the grant of letters of administration and that such taxes were refundable under the act of Congress approved June 27, 1902 (32 Stat., 406). The Secretary of the Treasury rejected the application and this action is the result.

Section 29 of the act of June 13, 1898 (30 Stat., 448), and under which the tax was collected, provides as follows:

"That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows—that is to say: Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be:

"First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother, or sister to the person who died possessed of such property, as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property.

* * * * * * *

"Fifth. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree or collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at the rate of five dollars for each and every hundred dollars of the clear value of such interest:

16 Provided, That all legacies or property passing by will, or by the laws of any State or Territory, to husband or wife of the

person died possessed, as aforesaid, shall be exempt from tax or duty."

The above section was amended by act approved March 2, 1901 (31 Stat., 938, 947), by adding a proviso to the effect that the section should not be held applicable to bequests or legacies for uses of a religious, literary, charitable, or educational character, nor should it apply to the estate of any person who died prior to June 13, 1898, the date when section 29 first went into effect.

Section 29 as amended was repealed to take effect on July 1, 1902, by an act approved April 12, 1902 (32 Stat., 96, 97).

On June 27, 1902, the President approved an act entitled "An act to provide for refunding taxes paid upon legacies and bequests," etc. (32 Stat., 406), the third section of which is as follows:

"That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the act approved June thirteenth, eighteen hundred and ninety-eight, entitled 'An act to provide ways and means to meet war expenditures, and for other purposes,' and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two."

As the personal estate remaining at the end of the year after the payment of debts and charges and costs of administration did not come into the actual possession or enjoyment of the two heirs entitled until after July 1, 1902, the amount they were to receive was uncertain for and during the time the administrator was in charge. Before that date they could not demand, nor were they entitled to receive in possession, any part of the inheritance under the law which kept the administrator in charge. Certainly there was nothing actually vested in these heirs until after the debts were provided for and the legitimate costs and expenses of the administration were ascertained and discharged. None of these things occurred prior to July 1, 1902.

The question, then, is not whether the distributive interests were taxable under the law, but whether these interests upon which the taxes were levied were contingent beneficial interests not coming into possession or enjoyment of the parties entitled to them and should be refunded.

The court is of opinion that these beneficial interests in the estate to which the distributees were entitled were technically vested at the date of the intestate's death by relation back to the date of the death

of the intestate, inasmuch as the distributees' interests came by
17 descent from the intestate and not from the administrator who was the personal representative.

But the authorities indicate that the language of the refunding statute must be taken in a broader sense and as referring to the time when the beneficial interests were received, or were capable of being received, into actual and absolute possession or enjoyment, and not referring necessarily to the strict legal character of the interest. The statute qualifies the words "absolutely vested" with the further words "in possession or enjoyment," thereby defining the nature of the vested estate prior to the refunding act. The courts have said that the tax is leviable at the time the rate could be ascertained. The rate of the tax assessable could only be determined after the debts and legitimate incidents of the administration of the estate became known. In the collection of debts due an estate the administrator may incur expenses, chargeable against the assets in his hands, and in resisting claims interposed against the estate expenses and costs may be incurred, and there are, of course, certain costs and legal expenses attaching to an administration. When these are known and deducted from the whole amount of the assets the distributive share of each distributee can then only be known and the rate of the death duty be fixed. Until that time the "beneficial interest" was necessarily contingent in that sense which relates to the amount of it, and consequently the rate of tax in the present instance was uncertain until the beneficial interest could be paid. If the tax could only be levied at the time the distributees receive, or could rightfully demand possession or enjoyment, it must follow here that these distributive shares were contingent beneficial interests which did not come into possession or enjoyment prior to July 1, 1902.

The amendatory act of 1901, it was said in Vanderbilt v. Eidman (196 U. S., 498), enlarged the act of 1898 so as to cause that act to embrace subjects of taxation which were not included prior to the amendment. The amendatory act contained new provisions not expressly found in the original act, such as the proviso at the close of section 30 of the original act. By the proviso at the close of section 30 the Supreme Court, in construing the following language, to wit: "Any tax paid under the provisions of sections 29 and 30 shall be deducted from the particular legacy or distributive share on account of which the sum is charged," said it was a provision plainly importing a practically contemporaneous right to receive the legacy or distributive share and one which would be impracticable of execution if the tax was to be assessed and collected before the beneficiary and the rate of tax could certainly be ascertained.

In the case of Hertz v. Woodman (218 U. S., 205), the court, following what was said in the Vanderbilt case, declared that the tax or duty did not attach to legacies or distributive shares until the right of succession became an absolute right of "immediate possession or enjoyment," thus repeating the language of the statute in its literal terms.

Where the right to tax is uncertain, indefinite, and doubtful the public right ought to be subordinated to the claim of exemption for the private right. Assuredly, the right to tax should be so clear as to avoid the forfeiture of any part of an estate. Taxes illegally collected are nothing more nor less than forfeiture to the extent of the illegal exaction.

Everything considered, we think the claimant is entitled to recover. The law imposing the tax did not operate to fasten at the moment the right of succession passed by death the liability on the amount of the distributive shares that the heirs subsequently received, not only because of the difficulty of fixing the rate before the estate was settled, but because the language of the refunding act is explicit in its terms. In some cases the uncertainty in fixing the rate would make the effort well nigh impossible. In the present instance, defendants recognized the uncertainty and impossibility of collecting anything at the outset by not attempting to make the levy until the net estate was distributed to those entitled to receive it.

It is ordered that claimants have and recover of and from the United States the sum of three thousand two hundred ninety dollars and twelve cents ($3,290.12).

18 VII. *Judgment of the court.*

BENJAMIN F. JONES, JR., AS SOLE ADMINISTRATOR OF the estate of Adelaide P. Dalzell, deceased,
v.
THE UNITED STATES. } No. 30296.

At a Court of Claims held in the city of Washington on the 23rd day of March, 1914, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant and do order, adjudge, and decree that the claimant, Benjamin F. Jones, jr., as sole administrator of the estate of Adelaide P. Dalzell, deceased, do have and recover of and from the United States the sum of three thousand two hundred and ninety dollars and twelve cents ($3,290.12).

BY THE COURT.

19 VIII. *Application for and allowance of appeal.*

From the judgment rendered in the above-entitled cause on the 23rd day of March, 1914, in favor of claimant, the defendants, by their Attorney General, on the 6th day of April, 1914, make application for, and give notice of, an appeal to the Supreme Court of the United States.

HUSTON THOMPSON,
Assistant Attorney General.

Filed April 6, 1914.

Ordered: That the above appeal be allowed as prayed for.

APRIL 6, 1914.

BY THE COURT.

20 In the Court of Claims.

BENJAMIN F. JONES, JR., AS SOLE ADMINISTRATOR OF the estate of Adelaide P. Dalzell, dec'd.
vs.
THE UNITED STATES.
No. 30296.

I, John Randolph, assistant clerk Court of Claims, certify that the foregoing are true transcripts of pleadings in said cause; of the history of proceedings therein; of the argument and submission of the case; of the findings of fact and conclusion of law and opinion of the court, filed March 23, 1914, by Judge Howry; of the judgment of the court; of the application of the defendants, by their Attorney General, for and the allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 15th day of April, A. D. 1914.

JOHN RANDOLPH,
[SEAL.] *Assistant Clerk Court of Claims.*

(Indorsed on cover:) File No. 24172. Court of Claims. Term No. 450. The United States, appellant, *vs.* Benjamin F. Jones, jr., as sole administrator of the estate of Adelaide P. Dalzell, deceased. Filed April 16th, 1914. File No. 24172.)

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, APPELLANT, *v.* BENJAMIN F. JONES, JR., AS SOLE ADMINISTRATOR of the estate of Adelaide P. Dalzell, deceased.	No. 1021.

APPEAL FROM THE COURT OF CLAIMS.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and moves the court to advance this cause for hearing. It is suggested that, if agreeable to the court, the case, if advanced, be assigned for hearing on the first Monday in December next.

This was a suit against the United States for the recovery of internal-revenue taxes collected under sections 29 and 30 of the act of June 13, 1898, 30 Stat. 448, 464, 465, known as the Spanish War Revenue Act, as amended by the act of March 2, 1901, 31 Stat. 938, 948, and was prosecuted under the provisions of the Refunding Act of June 27, 1902, 32 Stat. 406, 407.

The question is whether administrators are entitled to be refunded internal-revenue taxes paid upon estates of intestates where the next of kin were not

entitled to receive, under the provisions of State laws, their distributive shares prior to July 1, 1902.

Several million dollars were collected on such estates by the Treasury Department, and as the decision of this court herein will determine whether these taxes are refundable, it will control the disposition of a large amount of litigation which would necessarily follow the decision of the Court of Claims.

Opposing counsel concur.

JOHN W. DAVIS,
Solicitor General.

JUNE, 1914.

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In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, APPELLANT, *v.* BENJAMIN F. JONES, JR., AS SOLE ADMINISTRATOR of the estate of Adelaide P. Dalzell, deceased.	No. 450.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal by the United States from a decision of the Court of Claims in favor of appellee, wherein the latter obtained judgment for the recovery of an inheritance tax of $3,290.12, assessed and collected by the internal-revenue collector from the estate of Adelaide P. Dalzell under sections 29 and 30 of the act of June 13, 1898 (30 Stat., 448, ch. 448), and its amendments. It may be termed a "class" case, in that the internal-revenue collector reports that claims of a like nature against the United States in the approximate sum of $600,000 have been filed in his office, and that in the

event appellee's contention prevails not only will the Treasury of the United States be liable for said sum, but claims already settled in the department in the total approximate sum of $1,500,000 may be reopened.

On June 28, 1902, appellee's decedent, Adelaide P. Dalzell, a widow and resident of Pittsburgh, Allegheny County, Pa., died intestate, leaving as her sole next of kin two daughters, Virginia C. Dalzell and Sue D. D. Jones, both of whom are still living. She died seized and possessed of personal property of the gross value of $226,115.29. Letters of administration were issued on July 14, 1902, to Benjamin F. Jones by the Orphans' Court in the city of Pittsburgh, and the said Jones thereupon qualified as administrator and took possession of the personal property of the estate.

On May 4, 1903, the personal estate was distributed to the two children of the intestate under the provisions of the testamentary laws of the State of Pennsylvania.

On or about October 24, 1905, the collector of internal revenue for the city of Pittsburgh, Pa., collected under the act of June 13, 1898, *supra,* from the appellee as administrator of the estate of the intestate the sum of $3,290.12 (Rec., 4), which was later turned over to the United States in the ordinary course of business.

The question to be decided in this case will depend upon the following statutes:

1. Section 29 of the act of June 13, 1898, reading:

> That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States, as follows—that is to say: * * *.

Subsequent provisions of the section relate only to the amount of tax, and are therefore not set forth here.

2. The part of section 30 of the act of June 13, 1898, as amended by section 11 of the act of March 2, 1901 (31 Stat., 948 ch. 806), applicable to the case, reads:

> That the tax or duty aforesaid shall be due and payable in one year after the death of the testator and shall be a lien and charge upon the property of every person who may

die as aforesaid for twenty years, or until the same shall, within that period, be duly paid to and discharged by the United States; and every executor, administrator, or trustee having in charge or trust any legacy or distributive share, as aforesaid, shall give notice thereof, in writing, to the collector or deputy collector of the district where the deceased grantor or bargainer last resided within thirty days after he shall have taken charge of such trust, and every executor, administrator, or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall pay to the collector or deputy collector of the district of which the deceased person was a resident, or in which the property was located in case of nonresidents, the amount of the duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share.

3. Sections 7, 8, and 11 of the repealing act of April 12, 1902:

Sec. 7. That section four of said act of March second, nineteen hundred and one, and sections six, twelve, eighteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, Schedule A, Schedule B, sections twenty-seven, twenty-eight, and twenty-nine of the act of June thirteenth, eighteen hundred and ninety-eight,

and all amendments of said sections and schedules be, and the same are hereby, repealed.

SEC. 8. *That all taxes or duties imposed by section twenty-nine of the act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, prior to the taking effect of this act shall be subject, as to lien, charge, collection, and otherwise, to the provisions of section thirty of said act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, which are hereby continued in force as follows:* * * *

SEC. 11. That this act, except as otherwise specially provided for in the preceding section, shall take effect July first, nineteen hundred and two. (32 Stat., pt. 1, pp. 97, 98, 99, ch. 500.)

The subsequent portion of section 8 not here set forth merely reiterates section 30 of the act of June 13, 1898, as amended March 2, 1901.

4. Section 3 of the act of June 27, 1902:

That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the act approved June thirteenth, eighteen hundred and ninety-eight, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," and amendments thereof, the Secretary of the Treasury be,

> and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, *so much of said tax as may have been collected on contingent beneficial interests which shall not have* become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two. (32 Stat., 406, ch. 1160.)

The appellee contends and the court held that—

> As the personal estate remaining at the end of the year after the payment of debts and charges and costs of administration did not come into the actual possession or enjoyment of the two heirs entitled until after July 1, 1902, the amount they were to receive was uncertain for and during the time the administrator was in charge. Before that date they could not demand, nor were they entitled to receive, in possession any part of the inheritance under the law which kept the administrator in charge. Certainly there was nothing actually vested in these heirs until after the debts were provided for and the legitimate costs and expenses of the ad-

> ministration were ascertained and discharged. * * * (Rec., p. 11.)

And—

> Until that time the "beneficial interest" was necessarily contingent in that sense which relates to the amount of it, and consequently the rate of tax in the present instance was uncertain until the beneficial interest could be paid. If the tax could only be levied at the time the distributees receive, or could rightfully demand possession or enjoyment, it must follow here that these distributive shares were contingent beneficial interests which did not come into possession or enjoyment prior to July 1, 1902. (Rec., p. 12)

And—

> The law imposing the tax did not operate to fasten at the moment the right of succession passed by death the liability on the amount of the distributive shares that the heirs subsequently received, not only because of the difficulty of fixing the rate before the estate was settled, but because the language of the refunding act is explicit in its terms. (Rec., p. 13)

The Government maintains that the thing upon which the tax is laid is the transmission of or the right to succeed to a legacy, or distributive share, or gift in contemplation of death; that the tax was imposed immediately upon the death of the intestate by the act of June 13, 1898, *supra*, and at

that moment the transmission of a beneficial right to the possession and enjoyment of the distributive shares took place, and the shares thereby became subject to the tax.

ASSIGNMENTS OF ERROR.

The Court of Claims erred—

1. In failing to hold that the tax collected on the said legacies was imposed by section 29 of the act of June 13, 1898 (30 Stat., 464), prior to July 1, 1902, and its lien and right of collection preserved under section 30 of said act for a period of 20 years from July 1, 1902, by section 8 of the act of April 12, 1902 (32 Stat., 97).

2. In holding that the said legacies were contingent beneficial interests within the meaning of section 3 of the act of June 27, 1902 (32 Stat., 406), by reason of the fact that the exact amount of said legacies was not ascertainable during the period of one year from the death of a testator, fixed by State law for the settlement of the estate, owing to the existence of debts and other liens.

3. In not dismissing the petition.

ARGUMENT.

The Government presents its argument under the following heads:

1. What was the thing to be taxed?

2. At what time did the tax accrue?

As the questions involved in this case have been explicitly passed upon by this court and deter-

mined adversely to the position taken by appellee, we consider it unnecessary to go into an elaborate discussion of the statutes herein referred to, the same having been fully covered by Mr. Solicitor General Bowers in his remarkable brief in the case of *Hertz* v. *Woodman* (218 U. S., 205). We maintain that the decision in the latter case is stare decisis of all questions raised here, and shall therefore content ourselves with a brief review of the points involved and the cases covering them.

I.

WHAT WAS THE THING TO BE TAXED?

Appellee in his brief in the court below argued that the interests of the two daughters of Adelaide P. Dalzell, deceased, prior to July 1, 1902, were "contingent beneficial interests," and therefore not subject to the tax, and Mr. Justice Howry in his opinion said (Rec., p. 12) that "these distributive shares were contingent beneficial interests which did not come into possession or enjoyment prior to July 1, 1902." The Government maintains that they were not "contingent beneficial interests," but, on the contrary, were subject to the tax, having vested prior to July 1, 1902. It becomes necessary, therefore, to determine what was the thing subject to a tax under the statutes here in question.

In *Knowlton* v. *Moore* (178 U. S., 41–56) this court has said that the thing taxed under section

29, *supra* (p. 56) " is the power to transmit, or the transmission from the dead to the living."

In the case of *Hertz* v. *Woodman*, *supra*, Mr. Justice Lurton, delivering the opinion of the court, said:

> The subject of the tax or duty exacted by section 29 is the right of succession which passes by death to a vested beneficial right of possession or enjoyment to a legacy or distributive share.

In *United States* v. *Fidelity Trust Company* (222 U. S., 158) it was held in substance that a legacy to pay over the net income from a fund in periodical payments during the life of the legatee is not a contingent beneficial interest, but is a vested life estate, the income from which as determined by the mortuary tables and an interest rate of 4 per cent was subject to the tax.

II.

AT WHAT TIME DID THE TAX ACCRUE?

The testator, Adelaide P. Dalzell, died June 28, 1902. On May 4, 1903, her personal estate was distributed to her two children. The tax was not collected until October 24, 1905.

Appellee contends (and the court sustains his contention) that under a Pennsylvania statute (Rec., p. 7) which provides that " no administrator shall be compelled to make distribution of the goods of an intestate until one year be fully expired from the granting of the administration of the estate " (act Feb. 24, 1834, sec. 38 P. L., 80 Purd., 447)

the administrator had exclusive possession of the personal property up to and subsequent to July 1, 1902, and that therefore no tax had accrued on the several estates, they being contingent beneficial interests at the time of the repeal.

In the case of *Beer* v. *Moffat* (209 Fed. Rep., 779–784) the question raised was identical. Julius Beer, a resident of New Jersey, died July 18, 1901. The testator bequeathed the residue of his estate, one-half to his widow and her heirs absolutely, and one-half to his executors, to divide into as many shares as testator had children surviving, and one share for the issue collectively of each child leaving issue, the shares to be set apart, vested, and applied to the use of the children, etc. The shares to his daughters were in part life estates. Under the statutes of New Jersey the executors were not compelled to turn over the legacies until more than a year after the testator's death. The court said (p. 783):

> Turning, then, to the New Jersey statutes (which we shall not refer to in detail) we find nothing in their provisions that requires us to answer the question differently. The fact that executors in that State are ordinarily not obliged to pay legacies until after a year from the testator's death has no effect upon the quality of the estate given to a legatee by the will. This period of delay is granted for purposes of administration, and does not transform an estate that would

otherwise be vested into an estate that is contingent. (*Baldwin* v. *Eidman* (D. C. N. Y.), 202 Fed., 968.)

And it was held that the estates vested absolutely prior to July 1, 1902.

In the case of the *United States* v. *Fidelity Trust Company, supra,* the question arose as to whether a legacy to pay over the net income to the legatee in periodical payments during the latter's lifetime was a contingent beneficial interest, and whether the taxes paid on the value of this legacy under the war-revenue act of June 30, 1898, could be recovered under section 3 of the act of June 27, 1902 (ch. 1160, 32 Stat., 406). Previous to July 1, 1902, appellee had paid to the ~~residuary~~ legatee $17,027.59, but had stated to the internal-revenue collector on June 8, 1900, that the value of the estate as determined by the mortuary tables (the rate of interest being fixed at 4 per cent) was $74678.68, on which a tax of $5,600.90 was assessed and paid. Appellee brought suit to recover the difference between the amount taxed on the estimated value of the estate and the amount of the tax on the payments made prior to July 1, 1902. It was held in this case that a legacy such as the life estate herein referred to, although only a part had been actually received by the legatee, " was a vested life estate in a fund, changing in investment at the discretion of the trustee, but retaining its equitable identity." The court then compared such life interests in personal property to fee simple estates in lands, and said

that such estates "can only be enjoyed minute by minute."

In the case of *Hertz* v. *Woodman, supra*, the questions are identical with those raised in the case at bar and the facts are similar. The testator, Woodman, died in Chicago March 15, 1902. The Illinois Trust & Savings Bank qualified as executor. The clear value of the legacies payable under the will to the defendants in error was $166,250. On January 17, 1905, and before the payment of the legacies, there was paid under the war-revenue act of 1898 upon said legacies the sum of $2,812.49. In Illinois there was in force a statute similar to the one in Pennsylvania, wherein the executors were not required to pay legacies until a year, at least, from the testator's death. The certificate from the Circuit Court of Appeals concluded as follows:

> Upon the foregoing facts the question of law concerning which this court desires the instruction and advice of the Supreme Court is this: Does the fact that the testator dies within one year immediately prior to the taking effect of the repealing act of April 12, 1902 (U. S. Comp. Stat. Supp. 1903, p. 279), relieve from taxation legacies otherwise taxable under sections 29 and 30 of the act of June 13, 1898, as amended by the act of March 2, 1901?

It has been asserted by appellee that the case of *Hertz* v. *Woodman* can be distinguished because the question as certified in the *Hertz case* is not

sufficiently comprehensive to include the questions in the case at bar; that the legacies herein were of a " contingent beneficial " nature, owing to the fact that the State law permitted the executor to retain in his possession the estate for a certain period which had not expired previous to July 1, 1902; and the estates not having been actually paid over to the legatees on that date, no tax had accrued. In the *Hertz case,* however, this point was fairly raised on page 4 of the brief of the defendants in error, wherein it was said:

> Because the period of one year between the death of the testator and the date on which the statute made the tax " due and payable " coincides with the period ordinarily allowed for presenting and proving claims against the estate, and until that period has elapsed and the net value of the estate has been ascertained the interests of legatees and distributees are " contingent beneficial interests " which can not " become absolutely vested in possession or enjoyment," within the meaning of the refunding and declaratory act of June 27, 1902.

And in support of this contention there is set forth at length on pages 47 and 48 of the brief of defendants in error in the *Hertz case* a quotation from *Farrell* v. *United States* (167 Fed., 639, 641, 642, 643), in which it was held that because the administrator had, under the laws of Arkansas, the right to hold the estate for a period of two years within which creditors could exhibit their claims, and that two years had not elapsed on July 1, 1902,

the estate had not become vested and the interest was, therefore, a contingent and beneficial one and the estate not subject to the tax.

Mr. Justice Lurton, delivering the opinion of the court, in the *Hertz case,* has answered every possible question that can be raised here. He said:

> The question for solution must therefore turn upon the inquiry whether the tax in question had been imposed prior to the going into effect of the repealing act within the intent and effect of the saving clause just set out [the saving clause being section 8 of the act of Apr. 12, 1902, *supra*] (p. 216).
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> * * * * *
>
> In the light of these principles of interpretation we come, then, to the question as to whether, at the date of the repeal of section 29 of the act of June 13, 1898, the legacies to the defendants in error were subject to any tax or duty under the repealed section which constituted a "liability" under section 13, or to a tax or duty "imposed" under the saving clause of the repealing act (p. 218).
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> * * * * *
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> Upon the facts certified the right of succession which passed by the death of the testator was an absolute right to the immediate possession and enjoyment, a right neither postponed until the falling in of a life estate, as in *Mason* v. *Sargent* (104 U. S., 689), nor subject to contingencies, as in *Vanderbilt* v. *Eidman, supra.* No further event could make their title more certain nor their possession and enjoyment more secure. The law, then unrepealed and in full force,

> operated to fasten, at the moment this right of succession passed by death, a liability for the tax imposed upon the passing of every such inheritance or right of succession. The time for scheduling or listing was practically identical with the time for payment, and the listing or scheduling was required to be done by the executor charged with payment, but might be and was postponed for reasons of grace and of convenience. That is almost universal under any taxing system. The liability attaches at some time before the time for payment. But the liability for the payment of the tax exacted under section 29 of the act of June 13, 1898, accrued or arose the moment the right of succession by death passed to the defendants in error, and the occurrence of no other fact or event was essential to the imposition of a liability for the statutory tax upon the interest thus acquired (pp. 219–220).
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> * * * * *
>
> The precise question here involved, and upon which this case must turn, namely, whether a tax is not at once "imposed," by succeeding to an immediate right of possession and enjoyment, during the operation of the act of June 13, 1898, in such sense as to be within the intent of the saving clause in the act which repealed that act was not and could not have been involved in the case cited.

The court below has declared that the tax did not operate to fasten at the moment the right of succession passed by death (Rec., p. 13), but rather on the

day of payment of the legacies, and that the heirs "did not come into the actual possession or enjoyment" until after July 1, 1902 (Rec., p. 12). In reply to this we quote the words of the Hertz opinion (p. 223):

> It has been suggested that the lien given by section 30 only attaches when the tax is due and payable. The lien was in the section before the amendment, and, in view of its purpose, would attach with the obligation or liability for the tax. There is no reason which would justify the assumption that the lien only attached when the day of payment might arrive, a date most indefinite before the insertion of the time limit by the amendment of 1902.

CONCLUSION.

It is respectfully submitted that as the thing taxed was the right of succession, which occurred upon the death of the intestate prior to July 1, 1902, the distributive shares of the two legatees became vested within the meaning of the act of June 13, 1898, at the moment of her death and subject to taxation regardless of the fact that the administrator, under the State law, had the right to retain possession of the legacies for a period extending beyond July 1, 1902.

HUSTON THOMPSON,
Assistant Attorney General.

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